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1 THE SUNTAG LAW FIRM
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7 GARY R. FARRAR

8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF CALIFORNIA

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11 IN RE:

12 LARRY A. DUARTE and
13 DINA M. DUARTE,

14 Debtors.
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16
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NO: 10-23086-C-7

DC No.: SLF-3

MOTION FOR AUTHORIZATION TO SELL
PROPERTY AT PUBLIC AUCTION

Date: September 7, 2010

Time: 9:30 a.m.

Place: Department C

The Honorable Christopher M. Klein

1 Chapter 7 Trustee Gary R. Farrar respectfully moves for authorization to sell three
2 items of property (the "Property") at public auction. The Trustee believes the proposed sale of the
3 Property is in the best interests of the creditors and this Court should approve it pursuant to
4 Bankruptcy Code Section 363(b).

5 The Trustee represents the following:

6 1. On February 9, 2010, the Debtors filed this case. Gary R. Farrar was
7 appointed Chapter 7 Trustee.

8 2. The Debtors identified the Property on their Schedule B, Item 25, as
9 follows:

10 a. 1999 Harley Davidson Softtail Classic valued at \$8345;

11 b. 2004 Yamaha Grizzly 125 ATV valued at 1525; and

12 c. 2008 Kawasaki 110 Dirt Bike valued at \$1305.

13 3. The Debtors did not schedule any exemption in the Property.

14 4. The Property is stored at Ernst & Associates Auctioneers, Inc. (Farrar
15 Decl., ¶ 4).

16 5. The Debtors did not schedule any liens against the Property and the
17 Trustee is unaware of any liens. (Farrar Decl., ¶ 5).

18 **SALE OF THE PROPERTY AT PUBLIC AUCTION**

19 6. The Trustee believes, based on his knowledge and on the evaluation of the
20 Property by Ernst, that there is equity in the Property and a sale of the Property at public auction
21 is the best method of liquidating the Property for the benefit of the estate. (Farrar Decl., ¶ 6).

22 7. On May 12, 2010, the Trustee filed an application to employ Ernst, which
23 this Court granted on June 24, 2010. (Farrar Decl., ¶ 7).

24 8. The Trustee believes that by using an auction process, the Property will be
25 exposed to a large number of prospective purchasers and, for that reason, will likely be sold for
26 the best possible price. Ernst engages in extensive advertising, including highway billboards,
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1 television, and newspaper advertising, and it mails advertising brochures to its subscriber list of
2 approximately 6000 people. (Farrar Decl., ¶ 8).

3 9. If the Court approves this Motion, the Trustee intends to sell the Property at
4 public auction at Ernst's first available auction date. The Property will be sold on an "AS IS" basis
5 without any warranty. The proposed public sale will be held on the first available Saturday after
6 the Court approves this motion, at 9:00 a.m. at Ernst, located at 824 Kiernan Avenue, Modesto,
7 California 95356. Interested persons may inspect the Property at Ernst on the Friday preceding
8 the sale between 9:00 a.m. and 4:00 p.m. Information regarding the sale or subsequent sale
9 dates, if any, may be obtained by telephoning Ernst, at (209) 527-7399. (Farrar Decl., ¶ 9).

10 10. The Trustee intends to accept the highest reasonable bid. If, in the exercise
11 of the Trustee's business judgment, no reasonable bid is received, the Property may be held for
12 subsequent auction or private sale without additional notice. (Farrar Decl., ¶ 10).

13 11. The Trustee believes the sale of the Property at a public auction is in the
14 best interests of the creditors because it is likely to obtain the best possible price and should be
15 approved by the Court under Bankruptcy Code Section 363. (Farrar Decl., ¶ 11).

16 **AUCTIONEER COMPENSATION**

17 12. The Trustee requests authorization to pay Ernst a 15 percent commission
18 and to reimburse it for reasonable expenses directly from the proceeds of sale, and for Ernst to
19 collect a 12 percent buyer's fee directly from the buyer. The Trustee believes that this is a
20 customary practice for the auction sale of personal property and one which encourages the use
21 of auction professionals to assist with bankruptcy sales of property. The Trustee will file a report
22 of the sale with the Court. (Farrar Decl., ¶ 12).

23 **CONCLUSION**

24 The Trustee respectfully requests that the Court authorize the sale of the Property
25 at public auction on the terms and conditions set forth in this Motion, approve the compensation
26 of the auctioneer on the terms and conditions set forth in this Motion (15 percent seller's
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1 commission, reimbursement of reasonable expenses, and 12 percent buyer's fee), and that it
2 grant such other and further relief as is appropriate.

3 Dated: August 9, 2010

THE SUNTAG LAW FIRM
A Professional Corporation

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5 By: /s/ Dana A. Suntag
DANA A. SUNTAG
6 Attorneys for Chapter 7 Trustee
GARY R. FARRAR
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